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Corporation and The Hershey Company

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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN OF CALIFORNIA**

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14 HUHTAMAKI FINANCE, B.V. a
15 Netherlands corporation; THE
16 HERSHEY COMPANY; HERSHEY
17 CHOCOLATE &
18 CONFECTIONERY
19 CORPORATION, a Delaware
20 corporation; and THE HERSHEY
21 COMPANY, a Delaware
22 corporation,

23 Plaintiffs,

24 vs.

25 KENNETH DEAN AFFOLTER, an
26 individual, d/b/a BEYOND BOMB,

27 Defendant.

28 } CASE NO. C07-02514 RS

29 } DECLARATION OF LOIS
30 } DUQUETTE IN SUPPORT OF
31 } APPLICATION TO ENTER
32 } DEFAULT JUDGMENT

33 } Date: February 20, 2008

34 } Time: 9:30 a.m.

35 } Courtroom: Hon. Richard Seeborg

36 I, Lois Duquette, declare as follows:

37 1. I am a Senior Counsel for Plaintiff The Hershey Company. I have
38 personal knowledge of the matters stated herein, except for those stated upon

1 information and belief, and could truthfully testify thereto if called upon as a
2 witness.

3 2. I am informed and believe that Defendant has not appeared in this
4 action and has not responded to the Complaint within the time permitted by law.

5 3. I am informed and believe that Defendant is not an infant or
6 incompetent person or in the military service or otherwise exempted under the
7 Soldiers' and Sailors' Civil Relief Act of 1940.

8 4. A Clerk's Default was entered in this case on July 5, 2007.

9 5. This action involves a claim for damages by Plaintiffs Huhtamaki,
10 Finance, B.V., Hershey Chocolate & Confectionery Corporation and the Hershey
11 Company and (collectively "Hershey") against Defendant Kenneth Dean Affolter,
12 dba Beyond Bomb by reason of his infringement of Plaintiffs' famous JOLLY
13 RANCHER and REESES trademarks.

14 6. I am informed and believe that Defendant has been engaged in the
15 business, among other things, of advertising, selling, and distributing certain
16 infringing products including, without limitation, those included in Exhibit "A",
17 attached hereto. Exhibit "A" consists of pictures of the products sold by
18 Defendant.

19 7. Attached hereto as Exhibit "B" is a true and correct copy of the
20 trademark registration for Plaintiff's JOLLY RANCHER and REESES trademarks.

21 9. Attached hereto as Exhibit "C", collectively are true and correct
22 copies of the trademark registrations relative to the following trademarks owned or
23 licensed by Hershey: ALMOND JOY, GOOD & PLENTY, JOLLY RANCHER,
24 HERSHEY, HERSHEY'S, KIT KAT, KISSES, KRACKEL, MOUNDS, REESE'S,
25 MR. GOODBAR, TWIZZLERS, and YORK.

7. Plaintiffs allege claims against Defendant for: Trademark Infringement, Trademark Dilution, Unfair Competition and Injunctive Relief. Defendant's use of counterfeit marks entitles Hershey, at its option, to be awarded up to \$100,000.00 per violated mark.

8. Plaintiffs seek to recover damages in the sum of \$200,000 for violations of Plaintiffs' JOLLY RANCHER AND REESES marks pursuant to 15 U.S.C. 1117(c). Plaintiffs also seek an injunction in the form attached hereto as Exhibit "D" prohibiting Defendant from making further use of said mark.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed this 4th day of ~~November~~ ^{December} 2007 at Hershey, Pennsylvania.

Lois B. Duquette
Lois Duquette

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 633 West Fifth Street, 21st Floor, Los Angeles, California 90071.

On January 11, 2008, I served the document described as **DECLARATION OF LOIS DUQUETTE IN SUPPORT OF APPLICATION TO ENTER DEFAULT JUDGMENT** on the interested parties in this action, enclosed in a sealed envelope, addressed as follows:

Kenneth Dean Affolter
#93480-111
FCI Lompoc
3600 Guard Road
Lompoc, CA 93436

[X] **(By Mail)** Following ordinary business practices, I placed the document for collection and mailing at the offices of Holland & Knight LLP, 633 West Fifth Street, 21st Floor, Los Angeles, California 90071, in a sealed envelope. I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service, and, in the ordinary course of business, such correspondence would be deposited with the United States Postal Service on the day on which it is collected at the business.

[] **(BY UPS)** Following ordinary business practices, I placed the document for collection and UPS delivery at the offices of Holland & Knight LLP, 633 West Fifth Street, 21st Floor, Los Angeles, California 90071. I am readily familiar with the business' practice for collection and processing of correspondence for delivery by UPS, and, in the ordinary course of business, such correspondence would be deposited with UPS on the day on which it is collected at the business.

[] (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee stated on the attached service list.

Executed on January 11, 2008, Los Angeles, California

X I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Conchita Nickles
Conchita Nickles